

ILLINOIS REGISTER  
DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
100.3500	Amendment
100.9730	New Section
- 4) Statutory Authority: 35 ILCS 5/305(c-5), 35 ILCS 5/1401 and 35 ILCS 5/1501(a)(11.5)
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking provides guidance on the definition of "investment partnership" and the apportionment of income received by a partner through an investment partnership, under provisions enacted in Public Act 93-840.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
100.2406	New Section	31 Ill. Reg. 15240; November 16, 2007
100.3380	Amendment	32 Ill. Reg. 798; January 18, 2008
100.9700	Amendment	32 Ill. Reg. 798; January 18, 2008
100.5040	Amendment	
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this rulemaking: Persons who wish to submit comments on this rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Paul Caselton  
Deputy General Counsel - Income Tax  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Small businesses that invest in investment partnerships, rather than directly in stocks, bonds and similar items, will receive guidance on the taxation of the income from the partnership.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: January 2008

The full text of the Proposed Amendments begins on the next page:

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

**Section 100.3500 Allocation and Apportionment of Base Income by Nonresident Partners**

- a) In General.
  - 1) This Section provides guidance for allocation and apportionment of base income by nonresidents. All base income of a resident is allocated to Illinois pursuant to IITA Section 301(a).
  - 2) Part-year residents. Under IRC Section 706(a), the income from a partnership for a given taxable year is included in the gross income of a partner in the taxable year of the partner in which the partnership's taxable year ends. Accordingly, this Section shall apply to the income of a part-year resident from any partnership whose taxable year ends during the period in which the partner was a nonresident. Income from a partnership whose taxable year ends during the period in which the partner is a resident will be allocated entirely to Illinois.
  - 3) Unitary partners. This Section shall not apply to the apportionment of business income of a nonresident partner who is engaged in a unitary business with the partnership. Such partners shall apportion their unitary business income derived from the partnership in accordance with IITA Section 304(e) and Section 100.3380(d) of this Part.
  - 4) Except as provided in this subsection (a), all items of base income of a partner that are derived from the partnership shall be allocated or apportioned pursuant to this Section, including all items required to be separately stated to the partner under IRC Section 703(a)(1), all guaranteed payments under IRC Section 707(c), and all addition and subtraction modifications, but excluding items described in IRC Section 707(a).
- b) Business Income. *The respective shares of partners other than residents in so much of the business income of the partnership as is apportioned to this State in the possession of the partnership shall be taken into account by such partners pro rata in accordance*

*with their respective distributive shares of such partnership income for the partnership's taxable year and allocated to this State. (IITA Section 305(a))*

- 1) For purposes of this subsection (b), the determination of whether an item of base income is business income or nonbusiness income shall be based on the facts and circumstances of the partnership itself. Trade or business activities of a partner or of any related party are irrelevant.
  - 2) Business income of the partnership shall be apportioned to this State pursuant to IITA Section 304, in the same manner as it is allocated or apportioned for any other nonresident. (IITA Section 305(c))
  - 3) Lower-tier partnerships. In the case of a partnership that is itself a partner in a second partnership, a partner in the first partnership shall include in net income its partnership share of the first partnership's share of the items of business income of the second partnership, as apportioned to Illinois by that second partnership. If the second partnership is itself a partner in a third partnership, a partner in the first partnership shall include in net income its partnership share of the first partnership's share of the items of business income of the third partnership as determined under the preceding sentence, and so on through all partnerships that are themselves partners in other partnerships.
- c) Nonbusiness Income. *The respective shares of partners other than residents in the items of partnership income and deduction not taken into account in computing the business income of a partnership shall be taken into account by such partners pro rata in accordance with their respective distributive shares of such partnership income for the partnership's taxable year, and allocated as if such items had been paid, incurred or accrued directly to such partners in their separate capacities. (IITA Section 305(b))*
- d) Investment partnerships. For taxable years ending on or after July 30, 2004 (the effective date of Public Act 93-0840), in the case of an investment partnership, as defined in Section 100.9730 of this Part:
- 1) Except as provided in paragraph (2) of this subsection, taxable income that is distributable to a nonresident partner shall be treated as nonbusiness income and shall be allocated to the partner's state of residence (in the case of an individual) or commercial domicile (in the case of any other person). (IITA Section 305(c-5). IITA Section 203(e)(3) shall not require recapture of business expenses if the income from an investment partnership was treated as business income in years prior to the effective date of Public Act 93-0840 and is treated as nonbusiness income under this subsection (d).
  - 2) Any income distributable to a nonresident partner shall be treated as business income and apportioned as if such income had been received directly by the partner if the partner has made an election under Section 1501(a)(1) of this Act to treat all income as business income or if such income is from investment activity:
    - A) that is directly or integrally related to any other business activity conducted in this State by the nonresident partner (or any member of that partner's unitary business group). (IITA Section 305(c-5)(1);

- B) *that serves an operational function to any other business activity of the nonresident partner (or any member of that partner's unitary business group) in this State. (IITA Section 305(c-5)(2); or*
  - C) *where assets of the investment partnership were acquired with working capital from a trade or business activity conducted in this State in which the nonresident partner (or any member of that partner's unitary business group) owns an interest. (IITA Section 305(c-5)(3).*
- 3) *Income treated as business income received directly by a partner under paragraph (2) of this subsection shall be apportioned using the apportionment factors of the partner, without regard to any factors of the partnership.*

(Source: Amended at 32 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)